

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

VINCENT DANIEL HOPPER,

Plaintiff,

v.

JOHN DOE MYERS RECREATIONAL  
COACH NORTHWEST DETENTION  
CENTER *et al.*,

Defendants.

Case No. C05-5680RBL

REPORT AND  
RECOMMENDATION  
REGARDING DEFAULT

**NOTED FOR:  
MARCH 11<sup>th</sup>, 2006**

This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4. Before the Court is plaintiffs motion for default. (Dkt. # 22).

The court recommends the motion be **DENIED**.

FACTUAL BACKGROUND

Plaintiff was granted *in forma pauperis* status on January 5<sup>th</sup>, 2006. (Dkt. # 16). On January 6<sup>th</sup>, 2006 the court ordered the Marshals Service to attempt service by mail. (Dkt. # 19). Twenty days later the plaintiff moved for default against all defendants. The motion is premature and frivolous. The first defendant to acknowledge service did not do so until January 30<sup>th</sup>, 2006. (Dkt. # 27). Defendant were given 30 days to return service and 60 days thereafter to answer. (Dkt. # 19). No defendant could be in default until after April 5<sup>th</sup>, 2006.

Plaintiff's motion is frivolous and does not warrant any further consideration. A proposed order accompanies this Report and Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the

1 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ.  
2 P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v  
3 Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to  
4 set the matter for consideration on **March 11<sup>th</sup>, 2006**, as noted in the caption.

5  
6 DATED this 13<sup>th</sup> day of February, 2006.

7  
8 /s/ J. Kelley Arnold  
9 J. Kelley Arnold  
United States Magistrate Judge